

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

25424

FILE: B-210767**DATE:** June 9, 1983**MATTER OF:** Dr. Albert B. Deisseroth - Reimbursement of
Real Estate Expenses - Public Health
Service Officer**DIGEST:**

A Commissioned Officer in the Public Health Service (PHS) was separated from the officer corps and recruited to fill a manpower shortage position in the Veterans' Administration. Employee seeks reimbursement of real estate expenses occasioned by sale of his old residence in Maryland and purchase of new residence in California. Reimbursement is denied because as a commissioned officer in the PHS, employee was a member of a uniformed service whose pay and allowances are prescribed by Title 37 of U.S. Code, which does not provide for such reimbursement. Consequently, claimant was not embraced by reimbursement provisions of §§ 5721-5733 of Title 5, applicable to civilian employees of Government only. Thus, purported transfer was a separation from uniformed service followed by subsequent new appointment, and there is no authority for reimbursement of real estate expenses for new appointees.

This responds to a request for decision submitted by the Assistant Deputy Administrator for Budget and Finance, Office of Budget and Finance, Veterans' Administration (VA), concerning a claim for reimbursement of real estate expenses for Dr. Albert B. Deisseroth under the provisions of 5 U.S.C. § 5724a(a)(4).

The issue presented is whether a Commissioned Officer of the Public Health Service (PHS) is entitled to reimbursement of real estate expenses after separation from service and subsequent to reemployment with the VA. For the reasons stated below, we find no statutory authority which would allow for such reimbursement.

025856

Dr. Albert B. Deisseroth had served on active duty in the Commissioned Corps of the PHS, and was stationed at the National Institutes of Health in Bethesda, Maryland. On June 28, 1981, Dr. Deisseroth began work as the Chief of the Hematology/Oncology Section of the VA Medical Center in San Francisco. He states that he was recruited by the VA to fill "an existing void" at the Center. The VA has confirmed that Dr. Deisseroth's appointment was to a manpower shortage position. According to the PHS, Dr. Deisseroth's last day on active duty was June 30, 1981, and he was separated on July 1, 1981. On March 30, 1982, Dr. Deisseroth applied for reimbursement of \$9,736.50 in real estate expenses occasioned by the sale of his former residence in Potomac, Maryland, and the purchase of his new home in Novato, California.

The authorizing official at the VA Medical Center authorized miscellaneous expenses, travel and transportation for Dr. Deisseroth, his wife and three children, shipment of household goods, and real estate expenses.

The matter has come before us because of a disagreement between personnel within the VA as to whether or not Dr. Deisseroth is entitled to reimbursement. The Assistant General Counsel of the VA has concluded that Dr. Deisseroth is an employee "transferred" from one agency to another-- a position not shared by the Assistant Deputy Administrator for Budget and Finance who has submitted this request for decision.

Specifically, the Assistant General Counsel has urged that our holdings in 46 Comp. Gen. 628 (1967) and 47 Comp. Gen. 763 (1968), are applicable to Dr. Deisseroth's situation, and therefore as a "transferred" employee without a break in service, he is entitled to reimbursement of real estate expenses pursuant to 5 U.S.C. § 5724a(a)(4). However, those holdings are not applicable in the instant case, for both decisions pertained to overseas civilian employees transferred to agencies within the United States.

This Office has held that Commissioned Officers of the PHS are to be considered as members of a uniformed service. 45 Comp. Gen. 680 (1966); B-201706, March 17, 1981. Dr. Deisseroth, as an officer in the Commissioned Corps of the PHS, was consequently a member of a uniformed service at the time of his separation in June 1981. Therefore, he was

not embraced by the travel and relocation reimbursement authority of 5 U.S.C. §§ 5721-5733, which is applicable to civilian employees of the Government only. As a member of a uniformed service, claimant's pay and allowances were prescribed by Title 37 of the United States Code, and that title does not provide for reimbursement of real estate expenses. Further, section 101(3) of that title specifically includes the PHS as a "uniformed service." In addition, paragraph 2-1.2(b)(3) of the Federal Travel Regulations, FPMR 101-7 (May 1973 (FTR)), issued pursuant to 5 U.S.C. §§ 5721-5733, supra, specifically excludes from coverage all persons whose pay and allowances are prescribed by Title 37.

An examination of the legislative history of Title 5 reveals that it codifies, without substantive change, various laws relating to travel and relocation expenses of civilian employees of the Government. For example, Title 5 codifies the Administrative Expenses Act of 1946, Pub. L. 79-600, 60 Stat. 806, which prescribed travel reimbursement regulations for "any civilian officer and employee of the Government." The qualifying adjective "civilian" is found in the 1952, 1958 and 1964 editions of the Code. In 1966, Congress enacted Pub. L. 90-83, 81 Stat. 195, which amended Title 5 and added the section pertaining to relocation expenses, 5 U.S.C. § 5724a(a). Section 5721 of the amended title defined "employee" as an "individual employed in or under an agency." Although the adjective "civilian" no longer preceded "employee," nothing in the legislative history indicates a Congressional intent that this deletion was to serve as a substantive change in the law so as to include members of the uniformed services as "employees." In fact, Senate Report No. 482 which accompanied the legislation, although referring to the definition of "agency" under the Back Pay Act, 5 U.S.C. § 5596, stated that: "The definition in subsection (a)(2) continues the application of the section to only civilian officers and employees, and does not encompass members of the uniformed services as they are not 'employed' in or under an agency." See 1967 U.S. Code Cong. & Ad. News, p. 1549.

Therefore, at the time of his move from the PHS to the VA, Dr. Deisseroth was not covered by the real estate expenses reimbursement authority of 5 U.S.C. § 5724a(a)(4) since he was not a civilian employee. Also, Title 37 contains no analogous provision which would allow for such reimbursement. Therefore, we must regard Dr. Deisseroth's purported "transfer" to have been a separation from a uniformed service followed by a subsequent new appointment,

and there is no authority for reimbursement of real estate expenses for new appointees. See B-164854, August 1, 1968; cf. Stephen E. Goldberg, B-197495, March 18, 1980.

Accordingly, as no statutory authority exists to reimburse the claimant for real estate expenses under either Title 5 or Title 37, his claim for such must be denied.

We also note that the VA has allowed Dr. Deisseroth travel and transportation expenses. This would be a proper reimbursement to Dr. Deisseroth only under either 5 U.S.C. § 5723, as a new employee in a manpower shortage position, or under 37 U.S.C. § 404(3) as a separated member of a uniformed service upon return to his home of record. We were informed that Dr. Deisseroth was a manpower shortage appointee. However, reimbursement under such authority is limited. Thus, residence sale and purchase expenses, miscellaneous expense allowance, and per diem for family are not allowable. See FTR paragraph 2-1.5f(4); 54 Comp. Gen. 747 (1975). Therefore, any amounts erroneously paid to Dr. Deisseroth beyond the scope of this authority will have to be repaid by him. See Dr. Frank A. Peak, 60 Comp. Gen. 71 (1980).



Acting Comptroller General
of the United States